

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____ 7/28/2021

ROY OLSEN,

Plaintiff,

20-CV-00103 (PGG)(SN)

-against-

ORDER

THE SHERRY NETHERLAND, INC., et al.,

Defendants.

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SARAH NETBURN, United States Magistrate Judge:

The *pro se* Plaintiff has filed a series of motions and letters seeking to strike Defendants' reply papers in support of their respective motions to dismiss the Complaint. See ECF Nos. 49, 53. Plaintiff first moves to strike the motion filed by Defendants Mechling and Sasson or, in the alternative, to strike the reply brief. ECF No. 49. Defendants Mechling and Sasson filed (1) an affidavit of service on May 6, 2021, attesting that they timely served Plaintiff with their opening motion papers, ECF No. 35, and (2) an affidavit of service on July 22, 2021, attesting that they served Plaintiff with their reply papers 10 days after those papers were filed with the Court, ECF No. 52.

Plaintiff also moves to strike the reply brief of The Sherry Defendants. ECF No. 53. Appended to The Sherry Defendants' opening and reply papers are certificates of service that state that Plaintiff was served with their opening brief via regular mail on May 6, 2021, ECF No. 31, and the reply papers via email on July 12, 2021, ECF No. 45. The Sherry Defendants also filed an affidavit of service on July 27, 2021, attesting that they re-served Plaintiff with their reply papers 15 days after those papers were filed with the Court, ECF Nos. 59, 60.

The Court has determined that the Defendants' original motions to dismiss were timely filed and timely served. Plaintiff opposed the motions from both groups of Defendants, indicating that he had received both motions. ECF No. 40. And although Defendants Mechling and Sasson were unquestionably late in serving Plaintiff with their reply brief, such delay did not cause Plaintiff any harm and did not prejudice him. Accordingly, Plaintiff's motion to strike are DENIED.

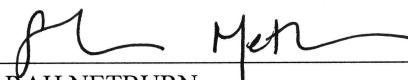
Allegedly in support of his motion to strike, Plaintiff filed a brief that appears to address the merits of the Defendants' reply brief. The Sherry Defendants filed a letter stating that the brief in support of the motion to strike the reply is really an impermissible sur-reply. The Court construes Plaintiff's reply brief as a sur-reply filed without prior leave of Court. Accordingly, the Court will not rely on Plaintiff's sur-reply when evaluating Defendants' motions to dismiss.

The Court's decision on these issues is final and the Court will not receive any further applications on the matter.

Defendants are reminded of their obligation to serve the Plaintiff with any document filed with the Court. If Plaintiff does not consent to service by electronic means, service must be made by first class mail and proof of service must be filed on the docket. Plaintiff, for his part, is urged to accept electronic service to ensure that he receives immediate notice of all documents filed with or issued by the Court.

The Clerk of Court is directed to deny the motions at ECF Nos. 49 and 53, and to mail a copy of this order to the Plaintiff.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: July 28, 2021
New York, New York